

DECISION



THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D.C. 20548

FILE: B-221410 **DATE:** April 4, 1986
MATTER OF: Muschong Metal & Manufacturing Company

DIGEST:

1. Issuance of a COC finding an offeror responsible for the purposes of a partial award does not require partial award to the offeror where a single award to another offeror would be less costly to the government than multiple awards.
2. Where the solicitation requires that the awardee must expand its production capacity, the determination to make a single award to a producer already in the mobilization base was consistent with the evaluation factor concerning the awardee(s) ability to meet expanded quantitative mobilization requirements.
3. Where proposals were evaluated in a manner consistent with solicitation "Evaluation and Award Factors" provision, and where the protester merely raises general allegations regarding the propriety of analysis, the protester has not met its burden of affirmatively proving its case.

Muschong Metal & Manufacturing Company (Muschong) protests the award of a contract to Dayron Corporation (Dayron) for the entire amount (17,961,396) of M223 fuzes (along with an option to purchase up to 17,961,396 additional fuzes) under United States Army Armament, Munitions & Chemical Command's request for proposals (RFP) No. DAAA09-85-R-0361. Muschong contends that it should have received an award for 5,708,246 of the fuzes, since the RFP permitted partial awards to multiple bidders and, although Muschong was the low bidder for the entire quantity, it obtained a certificate of competency (COC) establishing it was capable of timely providing only 5,708,246 fuzes.

We deny the protest.

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The RFP provided that the agency could make one award for the entire amount of fuzes; make three separate awards for 7,735,000, for 5,708,246, and for 4,518,150 fuzes; or make two separate awards for 8,751,806 and for 4,209,590 fuzes. Offers were to be evaluated for the purpose of award on the bases of offered prices, imputed costs of government-furnished materials, and transportation costs on an F.O.B. origin basis. The agency reserved the right to make the combination of awards determined to be in the best interest of the government, price and other factors considered. The principal factor of the "other factors" was the potential quantitative mobilization production requirement for the fuzes and the ability of the awardee(s) to respond to future demands for increased production.

Since Muschong's best and final offer to supply the entire 17,961,396 fuzes was evaluated as the low offer, a preaward survey was conducted on that firm. The survey resulted in a recommendation that no award be made to Muschong due to unsatisfactory findings regarding production capability, quality assurance capability, financial capability, and ability to provide for the transportation of hazardous materials.

Because Muschong is a small business, the contracting agency referred the matter of the offeror's responsibility to the Small Business Administration (SBA) for a determination whether to issue a COC. The SBA determined that, even though Muschong did not possess the capability to produce 17,961,396 fuzes in the required time frame, Muschong did possess the capability to meet the RFP's requirements under the alternative allowing a partial award for 5,708,246 fuzes. Accordingly, a COC was issued to Muschong for this amount of fuzes.

In view of the SBA's determination, the contracting agency conducted a price analysis comparing the alternatives of making three separate awards versus making a single award to Dayron--the low responsible offeror for the entire amount of fuzes. This evaluation took into account--consistent with the solicitation's evaluation criteria--offered prices, imputed costs of government-furnished material, and transportation costs. The agency determined that the evaluated prices for three separate awards totaled \$11,030,846.13, while Dayron's evaluated

price for the entire quantity was \$10,564,885.14. Since a single award afforded a \$465,960.99 savings, the agency awarded a contract for the entire amount of fuzes to Dayron.

Muschong protests the decision to make a single award for three reasons. First, it contends that because the SBA issued a COC to Muschong the contracting agency could not ignore that COC by declining to make a partial award to Muschong. Second, it contends that an award of the entire amount of fuzes to a firm already producing the fuze as a part of the current M223 fuze mobilization base is improper in view of the amendment No. 0001 language stating that "The purpose of this competitive solicitation is to expand the current M223 fuze mobilization base." Third, Muschong believes that, in view of Muschong's lower offered prices, the conclusion that the agency would save \$465,960.99 by making a single award suggests that the methodology used in the analysis was flawed.

We cannot agree with the first basis of the protest. While Muschong is correct in noting that the SBA's determination on the question of a small business concern's responsibility is conclusive on all parties, 15 U.S.C.A. § 637(b)(7) (West Supp. 1985), this fact merely means that the contracting agency may not deny the small business concern an award based on a finding of nonresponsibility. That Muschong did not receive a partial award had nothing to do with its responsibility, but resulted from the price evaluation indicating that multiple awards, including an award of 5,708,246 fuzes to Muschong, would be more costly than a single award for the entire amount of fuzes. The RFP authorized a single award on the basis of the low evaluated price, provided such an award was consistent with expanding the mobilization base, and the fact that a COC was issued to a firm not in line for award was irrelevant. Ackerman Johnson Fastening Systems, Inc., B-212287, Aug. 2, 1983, 83-2 CPD ¶ 161.

The question remains whether the award was consistent with the mobilization base evaluation factor. Decisions about how many producers must be kept in active production as mobilization base producers necessarily involves a great deal of discretion by the military agencies that have the expertise to make them. We therefore will not question the agencies' decisions absent a convincing showing that they

abused their discretion. Martin Electronics, Inc., B-219330, Sept. 20, 1985, 85-2 CPD ¶ 314. In this case, Dayron will be required to comply with the language in amendment No. 0001 stating that:

"any current mobilization base producer for this fuze agrees to expand his capacity by producing on a separate and distinct line using excess or new production equipment not currently being used."

Thus, the mobilization base capacity will be expanded as a result of the award to Dayron, and the agency's application of the evaluation criteria in making the award was reasonable.

Furthermore, to the extent Muschong contends that the RFP should be read as requiring awards to more than one firm in order to expand the current mobilization base, we point out that the RFP originally required three separate awards with no contractor receiving more than one award. The agency amended the solicitation, however, expressly deleting this requirement and replacing it with the language permitting a single award.

Finally, section "M" (Evaluation and Award Factors) stated that offers would be evaluated on the basis of award prices, option prices, the cost of government-furnished material, and transportation costs. These factors were used in the agency's price analysis, and Dayron's lower evaluated total price, notwithstanding its higher unit prices, resulted from its lower transportation costs to ship the items from the Dayron's point of origin. Since Muschong, which has the burden of proving its case, advances no specific reasons as to why the analysis was faulty, it has presented no basis to question the agency's determination that multiple awards would have been more costly to the government than a single award for the entire amount. Advanced Technology Engineering, Inc., B-219371, Aug. 16, 1985, 85-2 CPD ¶ 186.

Accordingly, the protest is denied.

for *Seymour Efron*
Harry R. Van Cleve
General Counsel